

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLEO BROWN,

Defendant-Appellant.

UNPUBLISHED

March 26, 2002

No. 227348

Wayne Circuit Court

LC No. 99-004417

Before: Neff, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant was convicted by a jury of aggravated stalking, MCL 750.411i, and was sentenced to three to five years' imprisonment. She appeals as of right. We affirm.

First, defendant contends that the aggravated stalking statute is unconstitutionally overbroad. This Court has previously upheld the statute under the same challenge. *People v White*, 212 Mich App 298, 308-315; 536 NW2d 876 (1995). In making this argument, defendant relies exclusively upon *Staley v Jones*, 108 F Supp 2d 777 (WD Mich, 2000), which held that Michigan's aggravated stalking statute was unconstitutionally overbroad. However, this decision was reversed by *Staley v Jones*, 239 F3d 769, 792 (CA 6, 2001), where the Sixth Circuit Court of Appeals concluded that this Court's determination in *White*, that the stalking statute was not vague or overbroad, was not contrary to, or an unreasonable application of, federal law as it existed at the time of the defendant's offense, 1995 and 1996. Accordingly, this argument has no merit.

Next, defendant claims that the trial court's excusal of women from the jury pool denied her Sixth Amendment right to an impartial jury drawn from a fair cross section of the community. However, defendant failed to object to the trial court's exclusion of potential jurors and expressed satisfaction with the jury. Therefore, the issue is not preserved for this Court's review. *People v Hubbard (After Remand)*, 217 Mich App 459, 465; 552 NW2d 493 (1996). In any event, defendant has failed to establish a prima facie violation of her Sixth Amendment right to a jury drawn from a fair cross section of the community.

Next, defendant argues that her sentence is disproportionate. Because the actions for which defendant was convicted occurred during 1998, the judicial sentencing guidelines are applicable. MCL 769.34(1); *People v Reynolds*, 240 Mich App 250, 253; 611 NW2d 316 (2000).

However, the sentencing guidelines do not list the offense of aggravated stalking, and therefore, the guidelines are inapplicable. See Michigan Sentencing Guidelines, (2d ed, 1988), pp 1, 11-22. See also *People v Edgett*, 220 Mich App 686, 690; 560 NW2d 360 (1996). Although defendant argues that the sentencing guidelines can still be used as a gauge of proportionality, she cites no supporting authority for this proposition. Thus, we consider the argument abandoned. See *People v Hill*, 221 Mich App 391, 397 n 2; 561 NW2d 862 (1997).

Where the sentencing guidelines do not cover a particular offense, this Court reviews the sentences imposed solely for an abuse of discretion. *People v Compagnari*, 233 Mich App 233, 235-236; 590 NW2d 302 (1998). In the context of sentencing, an abuse of discretion occurs when the sentence is not proportionate to the seriousness of the circumstances surrounding the offense and offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). We conclude that the trial court did not abuse its discretion in sentencing defendant to a prison term of three to five years for her aggravated stalking conviction. The court noted the circumstances underlying the offense, including defendant's abuses of the court system as part of her harassment of the complainant, and the effect of defendant's actions on the complainant and his family, which are permissible considerations at sentencing. See *People v Rice (On Remand)*, 235 Mich App 429, 446; 597 NW2d 843 (1999); *Compagnari*, *supra* at 236. Accordingly, we believe that defendant's sentence, although harsh for a first-time offender, does not violate the principle of proportionality.

Finally, defendant contends that her conviction for aggravated stalking violates double jeopardy, where she was subsequently convicted of filing a false police report in the Saginaw Circuit Court. We disagree. If indeed double jeopardy was violated by both convictions, it would be triggered by the subsequent conviction. Moreover, the Legislature intended to impose multiple punishments for both defendant's conviction of aggravated stalking and any other conviction and resulting penalty arising from the same conduct. MCL 750.411i(6); *People v Coones*, 216 Mich App 721, 728; 550 NW2d 600 (1996). Finally, because defendant was never prosecuted for filing the false police report in Wayne Circuit Court, her argument relating to the jurisdiction of Wayne Circuit Court is completely without merit.

Affirmed.

/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot